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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEO JOHN PONTILLO, II,
Plaintiff,
v.
COUNTY OF STANISLAUS,
Defendants.

No. 1:16-cv-01834-DAD-SKO

ORDER DENYING MOTIONS TO DISMISS
AS HAVING BEEN RENDERED MOOT

(Doc. Nos. 16, 18, 20)

On December 7, 2006, plaintiff Aleo John Pontillo, II initiated this civil rights action under 42 U.S.C. § 1983 against defendants the County of Stanislaus, Birgit Fladager, David Harris, John Reineccius, Steve Jacobson, Alice Mimms, Adam Christianson, and the City of Modesto. (Doc. No. 1.) The summonses were returned executed on the defendants on March 1, 2017. (Doc. No. 8–15.) On March 3, 2017, defendants Adam Christianson, County of Stanislaus, Birgit Fladager, David Harris, Steve Jacobson, and Alice Mimms filed a motion to dismiss plaintiff’s complaint. (Doc. No. 16.) The motion to dismiss was served by mail. (Doc. No. 16-1 at 3.) On March 8 and 10, 2017, defendants the City of Modesto and Jon Reineccius also filed motions to dismiss the complaint. (Doc. Nos. 18 and 20) All of the defendants’ motions to dismiss are noticed for hearing on April 18, 2017. (Doc. Nos. 16, 18, 20.) However, on March 27, 2017, plaintiff filed an amended complaint in this action. (Doc. No. 24.)

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1 Under Federal Civil Procedure Rule (“Rule”) 15, a party “may amend its pleading once as
2 a matter of course” if they do so “21 days after service of a motion under Rule 12(b).” Fed. R.
3 Civ. P. 15(a)(1). A party may also amend its pleading “with the opposing party’s written consent
4 or the court’s leave.” Fed. R. Civ. P. 15(a)(2). When a party must act within a specified time
5 after service and service is made by mail under Rule 5(b)(2)(C), “3 days are added after the
6 period would otherwise expire under Rule 6(a).” Fed. R. Civ. P. 6(d).

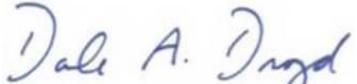
7 Accordingly, since the first motion to dismiss brought on behalf of a defendant in this
8 action was filed on March 3, 2017 and service was affected by mail, plaintiff had twenty-four
9 days from that date to file an amended complaint as a matter of course. The amended complaint
10 filed on March 27, 2017 was therefore timely filed and is now the operative pleading in the
11 action. The defendants’ pending motions to dismiss have consequently been rendered moot.

12 Based upon the foregoing,

- 13 1) The amended complaint filed on March 27, 2017 (Doc. No. 24) is the operative
14 pleading in the action;
- 15 2) The pending motions to dismiss (Doc. No. 16, 18, 20) are denied, without prejudice to
16 the filing of motions to dismiss aimed at the first amended complaint, as having been
17 rendered moot by plaintiff’s timely filing of his amended complaint; and
- 18 3) The hearing on those motions to dismiss noticed for April 18, 2017 is vacated.

19 IT IS SO ORDERED.

20 Dated: April 10, 2017

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23 UNITED STATES DISTRICT JUDGE
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